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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
SAMUEL COHEN,)
a/k/a Mouli Cohen,)
)
Defendant.)

No. CR 10-0547 CRB

**GOVERNMENT'S OBJECTION TO
DEFENDANT'S MOTION FOR LEAVE
TO FILE A MOTION FOR
RECONSIDERATION**

Honorable Charles R. Breyer

Defense counsel blamed a need for another lengthy continuance of sentencing on the government for not quickly enough providing a "definitive" response to a request for a stipulation to release original trial exhibits, the Court Reporter for not quickly enough preparing the trial transcripts, the Probation Officer for a draft PSR defendant does not like, and the Court for not ruling quickly enough on a meritless motion for the release of original trial exhibits. After the Court heard argument on that motion, received and reviewed briefing on that motion, and ruled on that motion (all within two weeks), defense counsel baselessly accuses the Court of "manifestly" failing to consider (1) material facts and (2) a "dispositive legal argument." The blame game needs to end, the motion for leave to file more attacks on the Court and the government should be denied, and the case should proceed to sentencing.

GOVT. OBJ. TO MOT. FOR LEAVE TO FILE MOT. FOR RECONSIDERATION;
CR 10-0547 CRB

1 Defendant's first claim is that the Court's Order does not cite any trial testimony
 2 supporting the conclusion that "Mr. Dillon identified the signatures on the exhibits as his own"
 3 and that "the record is bereft of support" for such a conclusion. (Def. Mot. at 2.) First, the Court
 4 is not required to cite examples supporting its ruling. The Court stated that it had "carefully
 5 reviewed the parties' submissions on this matter, in particular the trial transcripts." (Dkt. 357.)
 6 Second, contrary to defendant's allegations, the record is not bereft of support for the Court's
 7 ruling. For example, when discussing Exhibit 531A during cross-examination, Mr. Dillon
 8 testified as follows:

9 Q. Does that appear to be your signature?

10 A. It appears to be.

11 (Tr. 875.) Another example appears when discussing Exhibit 532A:

12 Q. Sir, if you can take a look at the signature page on 532A. Is that your signature?

13 A. It appears to be, yes.

14 (Tr. 882.) Another example appears when discussing Exhibit 537A:

15 Q. Mr. Dillon, 537A is a document entitled "Release Agreement." Can you look at
 16 the signature page and tell us if that's your signature?

17 A. That appears to be my signature, yes.

18 (Tr. 886-87.)

19 Mr. Dillon testified that the signatures on these *pages* of the exhibits as offered by the
 20 defense appeared to be his, but that he did not sign the *documents* as offered by the defense;
 21 indeed, he testified that he did not see the entire *documents* as offered by the defense at trial until
 22 years after the defense was claiming he signed them. In other words, as Mr. Dillon testified, the
 23 entire document was never presented for his review and signature. Based in part on Mr. Dillon's
 24 testimony, as well as on substantial additional evidence and common sense, the government
 25 argued that these documents were not authentic as presented by the defense at trial.

26 Defendant's second claim is that the Court failed to consider an argument that defendant
 27 did not make until seeking leave for "reconsideration." First, the Court has ruled that Mr. Dillon
 28 identified the signatures on the exhibits as his own. Thus, if forensic testing confirmed that, as

1 the defense suggests, of course it would not be a basis for an obstruction enhancement. Second,
 2 the defense excerpts just a portion of one sentence out of one paragraph of the Probation
 3 Officer's rationale in support of the obstruction of justice enhancement. The Probation Officer's
 4 justification in support of that enhancement, however, is three full paragraphs and relies on the
 5 following: (1) defendant produced false documents to the SEC; (2) defendant lied under oath
 6 during his deposition in the SEC proceedings; and (3) defendant created false documents and
 7 produced them at trial and in civil litigation. For example, the Probation Officer notes that
 8 during a deposition taken by the SEC, defendant stated the following: (1) it was Mr. Dillon's idea
 9 to purchase Ecast shares; (2) defendant had no idea Mr. Dillon's investment was in any way on
 10 behalf of Vanguard; (3) anyone who asked for an Ecast stock certificate received one; (4)
 11 defendant never told Mr. Dillon or anyone in the Dillon Group that Ecast was being acquired by
 12 Microsoft; and (5) defendant never told anyone to whom he sold Ecast shares that Ecast was an
 13 acquisition target of any public company or in merger negotiations with any public company or
 14 that he would buy back Ecast shares. Draft PSR, ¶¶ 27—29. The Court also will recall other
 15 fraudulent documents, such as the exhibit discussed with witness Sam Mills upon which the
 16 government used a series of red arrows to highlight all the signature discrepancies. Forensic
 17 testing of Mr. Dillon's signature on three exhibits, therefore, is far from a "dispositive legal
 18 argument"; it is no argument at all.

19 In essence, defendant obtained the relief he purportedly seeks—reconsideration—by
 20 filing a 5-page submission full of argument after 5:00 p.m. today, the evening before a hearing on
 21 his motion for another continuance of sentencing. For the reasons set forth in this response, and
 22 those set forth during oral argument on defendant's first motion for release of the original
 23 exhibits and in the Court's order denying that motion, the government respectfully requests that
 24 the Court deny defendant's motion for leave to file a motion for reconsideration.

25 DATED: March 20, 2012

Respectfully submitted,

26 MELINDA HAAG
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27 /s/
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